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Federal Communications Commission
Office of the Secretary

August 4, 2014

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

**Re: Notice of Ex Parte Presentation, Application of PMCM TV, LLC
File No. BPCDT-20130528AJP; Facility ID No. 86537**

Dear Ms. Dortch:

On July 31, 2014, the undersigned, as counsel for ION Media License Company, LLC ("ION"), met with Joyce Bernstein, Kevin Harding, Alison Greenwald Neplokh, David Roberts and Adrienne Denysyk, all of the Media Bureau. Also in attendance were the following: Robert McAllan of PMCM TV, LLC ("PMCM"); Donald Evans, counsel for PMCM; Robert Folliard, counsel for Meredith Corporation ("Meredith"); Mary Lovejoy, counsel for Cablevision Systems Corporation ("Cablevision"); and Ari Moskowitz, counsel for Time Warner Cable, Inc.

PMCM stated that its chief interest in obtaining Channel 3 as its PSIP "major" channel number is so that it can elect carriage on Channel 3 pursuant to the Commission's must-carry rules. I noted that pursuant to a channel positioning agreement dated as of September 25, 2002, between ION and Cablevision (the "Channel Positioning Agreement"), ION's station WPXN-TV, New York, New York ("WPXN"), a "must carry" station, is carried on Channel 3 on nearly all Cablevision systems in the New York DMA.

Section 76.57(d) of the Commission's rules provides that a must-carry station may be carried on any channel position mutually agreed by the station and a cable operator, rather than defaulting to one of three channel positions enumerated in the rules.¹ Moreover, as I stated in the meeting, the FCC repeatedly has held that a must-carry station party to a channel

¹ 47 C.F.R. § 76.57(d).

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placement agreement receives priority over a later-in-time must-carry station electing carriage on the same channel.² This policy helps to avoid viewer confusion and disruption of the business arrangements and settled expectations of the parties to channel placement agreements.³

As Meredith's counsel pointed out in the meeting, assignment of PSIP major channel number 3 to PMCM would result in viewer confusion in areas where KVVN's signal overlaps with the signal of a Meredith station that is assigned PSIP major channel number 3. ION urges the Commission to take into account the additional, substantial risk of viewer confusion and disruption throughout the New York DMA that would result from assignment of PSIP major channel number 3 to PMCM.⁴ ION understands that Channel 33 is available for

² See, e.g., *KVMD Licensee Co. v. Comcast Cable Commc'ns, Inc.*, 19 FCC Rcd 17395, at ¶ 7 (2004) (channel positioning agreement that predates must-carry channel positioning request has priority); *Complaint of KX Acquisition, LP*, 10 FCC Rcd 944, at ¶¶ 15-16 (1995) (same).

³ *KX Acquisition* at ¶ 19 ("We believe that preserving the existing channel order on [the] systems would be in the public interest because it reduced the possibility of any subscriber confusion").

⁴ Contrary to PMCM's assertion during the meeting, promotional consideration allocated to defray marketing and other costs associated with repositioning WPXN to Channel 3 is not inconsistent with the language or intent of Section 76.60 of the Commission's rules.

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KVNV's major channel number. This channel assignment comports with the Commission's rules and policies with respect to the assignment of major channel numbers, and has the added benefit of reducing the risk of disruption to existing channel line-ups.

Respectfully submitted,



Eve R. Pogoriler

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cc: Barbara Kreisman
Joyce Bernstein
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Alison Greenwald Neplokh
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